

ENTERED

June 28, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NIURKA MARIA GARCIA ANDRE, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. H-23-1754
§
MARTIN O'MALLEY, §
Commissioner of the Social §
Security Administration, §
§
Defendant. §

**MEMORANDUM AND OPINION ADOPTING THE MEMORANDUM
AND RECOMMENDATION**

Niurka Maria Garcia Andre filed this action under the Social Security Act, 42 U.S.C. § 405(g), for review of the Commissioner's final decision denying her request for disability insurance based on her inability to work since 2017 because of PTSD, lumbar radiculopathy, attempted suicide, depression, anxiety, diabetes, high blood pressure, and migraines. Andre and the Commissioner cross-moved for summary judgment. (Docket Entry Nos. 10, 13). Judge Richard Bennett recommended granting both motions in part and denying them in part and remanding to the Commissioner for further administrative proceedings. After considering the pleadings, the record, and the applicable law, the court adopts Judge Bennett's memorandum and recommendation. (Docket Entry No. 16). The reasons are as follows.

Andre filed an application for disability insurance benefits in 2017, alleging that she has been disabled since 2017. After a hearing and a supplemental hearing, the ALJ found no basis for disability because Andre's impairments did not meet or medically equal the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. The ALJ found that Andre had the ability to perform light work as defined in 20 C.F.R. 404.1567(b) and 416.967(b), with some

limits, and that she could perform a number of jobs in the economy. The Appeals Council denied Andre's request for review. This appeal followed.

In a detailed and careful opinion, the magistrate judge analyzed the record. The judge recommended denying Andre's motion for summary judgment with respect to her claim that the ALJ failed to sufficiently address the persuasiveness factors as to some of the medical opinions and as to her claim that an assistive device was necessary. The judge recommended granting Andre's motion for summary judgment as to the claim that the ALJ failed to sufficiently address the remaining doctors' medical opinions. The judge recommended granting the Commissioner's motion for summary judgment with respect to Andre's claims regarding the ALJ's findings about the assistive device and the persuasiveness factors regarding Dr. Willits and Dr. Campa's medical opinions. The judge recommended denying the Commissioner's motion for summary judgment with respect to the remaining doctors' medical opinions.

The court finds that the magistrate judge properly considered the evidence and correctly applied the applicable law. The memorandum and recommendation of Judge Bennett is adopted as this court's memorandum and opinion. An order of remand to the Commissioner is separately entered.

SIGNED on June 28, 2024, at Houston, Texas.



Lee H. Rosenthal
United States District Judge